

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK**

NICHOLAS BERGON AND BARBARA  
MYCEK, individually and on behalf of all  
others similarly situated,

Plaintiffs,

v.

ROCHESTER INSTITUTE OF  
TECHNOLOGY,

Defendant.

Case No. 6:20-cv-06283

**PLAINTIFFS' NOTICE OF SUPPLEMENTAL AUTHORITY**

Plaintiffs hereby provide this notice of supplemental authority of two new opinions in COVID-19 tuition and fee refund actions in relation to Plaintiffs' Memorandum in Opposition to Defendant's Motion to Dismiss (Dkt. No. 32). These decisions, denying a Motion to Dismiss on similar grounds raised by Defendant in this matter, are:

- 1.) *Gibson v. Lynn University, Inc.*, Case No. 20-CIV-81173-RAR (S.D. Fla. Nov. 29, 2020), attached hereto as Exhibit A.
- 2.) *Saroya v. University of the Pacific*, Case No. 5:20-cv-03196-EJD (N.D. Cal. Nov. 27, 2020), attached hereto as Exhibit B.

Plaintiff Gibson brought a putative class action asserting claims of breach of contract and unjust enrichment due to the University's refusal to give pro-rated refunds of tuition and fees as part of its response to the COVID-19 pandemic. Defendant's motion was denied in its entirety as to the aforementioned causes of action for reasons that make dismissal of Plaintiffs' Amended Class Action Complaint in this case inappropriate as well.

Plaintiff Saroya also brought a putative class action asserting claims including breach of contract on similar facts. Defendant's motion was denied as to the breach of contract claim for reasons that make dismissal of Plaintiffs' Amended Class Action Complaint in this case inappropriate as well.

Plaintiffs respectfully suggest that these decisions further support their position in this matter in opposition to Defendant's Motion to Dismiss.

Dated: December 1, 2020

Respectfully Submitted,

By: /s/ Philip Fraietta  
Philip L. Fraietta

**BURSOR & FISHER, P.A.**

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been served via CM/ECF this 1st day of December 2020 on all parties of record.

By: /s/ Philip Fraietta  
Philip L. Fraietta